

No. 34841-5-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

EMANUEL A. PANTELEON,

Defendant/Appellant.

Appellant's Brief

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A. ASSIGNMENT OF ERROR

The trial court erred in imposing restitution for injuries that Pantaleon's criminal conduct did not cause.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Did the trial court abuse its discretion in imposing restitution for injuries that were not causally connected to the crime charged?

C. STATEMENT OF THE CASE

Emanuel Pantaleon was charged as a principal and pled guilty to second degree assault and intimidating a witness. CP 4-5, RP 3-10. The conduct comprising the charges against Pantaleon was that he followed Andres Solis behind a tavern named the Green Lantern, called him a "rat," and initiated a fist fight with him before another person, Roberto Arroyo, shot Mr. Solis and also another man, Martinez. CP 37, 44, 62. Arroyo pled guilty to second degree murder and second degree assault with a firearm enhancement for his conduct. CP 37.

At the restitution hearing, Pantaleon argued since he was not the shooter and was not convicted of causing the shooting, he cannot be liable for restitution related to the treatment of Solis's gunshot injuries because his criminal conduct did not cause those injuries. CP 62, RP 32-35. Pantaleon further argued there was no evidence he knew any of the other

gang members had a gun and he cannot be held liable as an accomplice because he was not charged as an accomplice. CP 63, RP 32-35. The Court disagreed imposing \$15,296.18 restitution for the treatment of Solis's gunshot injuries. CP 65-66

This appeal followed. CP 67-70.

D. ARGUMENT

The trial court abused its discretion in imposing restitution for injuries that were not causally connected to the crime charged.

The court's authority to impose restitution is statutorily derived from RCW 9.94A.750. That statute limits the court's authority in pertinent part: "Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property " RCW 9.94A.750(5).

Under this limiting language, restitution is only allowed for losses that are causally connected to the crime charged. *State v. Tobin*, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007); *State v. Kinneman*, 155 Wn.2d 272, 286, 119 P.3d 350 (2005); *State v. Acevedo*, 159 Wn. App. 221, 229, 248 P.3d 526 (2010). The causal connection is determined by applying a "but-for" test - but for the charged crime, the loss would not have occurred. *State v. Griffith*, 164 Wn.2d 960, 966, 195 P.3d 506 (2008).

"Restitution may not be based on acts connected with the crime charged, when those acts are not part of the charge." *State v. Harrington*, 56 Wn. App. 176, 179, 782 P.2d 1101 (1989). For example, injuries to victims of a car accident did not provide a basis to claim restitution against a driver convicted of hit-and-run, because the criminal act occurred after the conduct that caused the injuries. *State v. Hartwell*, 38 Wn. App. 135, 140-41, 684 P.2d 778 (1984), overruled on other grounds by *State v. Krall*, 125 Wn.2d 146, 881 P.2d 1040 (1994). Similarly, the State was not allowed to claim restitution for damages resulting from a general criminal scheme for which the defendant was convicted, but solely for the damages arising from the time period charged. *State v. Mark*, 36 Wn. App. 428, 431, 675 P.2d 1250 (1984). And where the defendant perpetrated two assaults on the same victim, but was only charged and convicted of the second assault in which no injury occurred, restitution for the injuries suffered during the first assault was not allowed. *State v. Ashley*, 40 Wn. App. 877, 879, 700 P.2d 1207 (1985).

Under these authorities, Pantaleon can only be required to pay restitution for the compensable injuries (if any) that resulted from his own conduct. He was charged and convicted (as a principal) for second degree assault under the "intent to commit a felony" prong, and intimidating a

witness. Andres Solis was the victim of both charges. The conduct comprising the charge against Pantaleon was that he followed Mr. Solis behind the Green Lantern, called him a "rat," and initiated a fist fight with him before another person, Roberto Arroyo, shot Mr. Solis and also another man, Martinez. Arroyo pled guilty to second degree murder and second degree assault with a firearm enhancement for his conduct.

Since Pantaleon was not the shooter and was not convicted of causing the shooting, he cannot be liable for restitution related to the treatment of Solis's gunshot injuries because his criminal conduct did not cause those injuries. Pantaleon is also not liable for restitution as an accomplice because the State did not charge Pantaleon as an accomplice to any person's conduct and Pantaleon did not plead guilty to complicity.

E. CONCLUSION

For the reasons stated, the restitution order should be reversed and the case remanded to determine the amount of restitution, if any, attributable to Pantaleon's conduct. Pursuant to RAP 15.2(f), Appellant's indigent status should continue throughout this appeal and he should not be assessed appellate costs if the State were to substantially prevail. See CP 71-76. Appellate counsel anticipates filing a report as to Appellant's continued indigency no later than 60 days following the filing of this brief.

Respectfully submitted July 12, 2017,

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PROOF OF SERVICE (RAP 18.5(b))

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